

GAO

United States General Accounting Office
Washington, DC 20548

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Office of
General Counsel

In Reply
Refer to:

B-196646

The Honorable H. John Heinz, III
United States Senator
2031 Federal Building
1800 Liberty Avenue
Pittsburgh, Pennsylvania 15222

JAN 28 1980

Dear Senator Heinz:

We refer to your communication forwarding a letter from the D & S Construction Company (D&S) contending that the Federal Aviation Administration (FAA), Eastern Region, was guilty of "bid rigging" due to the manner in which it conducted two of its procurements.

DLG-03767
DLG-03766

The first procurement about which D&S complained--for the Greater Pittsburgh International Airport--was advertised in the Commerce Business Daily under invitation for bids No. EA-9-19. Bids were opened in mid-April 1979. Subsequently, the solicitation was canceled due to a determination that the bid prices were excessive. After various requests for the submission of prices on a negotiation basis, an award was made to a firm other than D&S. D&S learned of the award, the FAA advises, in early August at the latest.

DLG-03768

Since it is the apparent contention of D&S that by asking for the submission of price offers on numerous occasions the FAA was guilty of "bid rigging," we must conclude that the D&S allegation was untimely submitted to our Office and is not for our consideration. Our Bid Protest Procedures (4 C.F.R. § 20.2(b) (2) (1979)) require that protests such as this be filed with our Office or the agency within 10 working days after the basis is known or should have been known. It is apparent that D&S was aware of the various requests by the FAA for new price submissions well before the award in late July. Yet the protest



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[Conduction of
Procurements]

was not filed with our Office or the agency until our Office received the D&S letter on October 31, clearly after the 10 working days permitted.

The second procurement--one for the Allegheny County Airport--was advertised under invitation for bids No. EA-9-59. The invitation was canceled after bid opening since the prices received were felt to be excessive, and various requests for price offers (culminating in the request that best and final offers be submitted by September 21) were made on a negotiation basis. We have been advised by the FAA that an award was made to an offeror other than D&S on October 31..

DLG03769

Once again the D&S contention is based upon the numerous requests made for the submission of prices and upon the actions culminating in the request for the submission of best and final offers by September 21. D&S thus knew all the facts underlying its contention by at least September 21, but did not file its protest with our Office until we received the D&S letter on October 31, which was more than 10 working days after D&S knew the basis of its allegation. In view of the time requirements in our Bid Protest Procedures (4 C.F.R. § 20.2(b)(2) (1979)), we must conclude that the protest was not timely filed and that, consequently, it is not for our consideration.

The time limits on the submission of protests were adopted because our Office can best function if it is permitted to decide an issue while it is still practicable to take effective action with respect to the procurement where the circumstances warrant. We are unable to do so if a protest is filed after what we consider to be a reasonable time for the filing of a protest. It has been decided that no protest will be considered on its merits if untimely filed unless one of the exceptions in section 20.2(c) (where "good cause" for the consideration of a protest is shown or where "issues significant to procurement practices or procedures" exist) of our Bid Protest Procedures is applicable. The good cause exception generally refers to some compelling reason, beyond the protester's control, which prevented it from filing a timely protest. 52 Comp. Gen. 20,23 (1972). There is no

indication that this exception applies here. The significant issue exception is limited to issues which are of widespread interest to the procurement community and is exercised sparingly so that the timeliness standards do not become meaningless. Mobility Systems, Inc., B-191074, March 7, 1978, 78-1 CPD 179. While D&S has characterized the FAA's actions in these procurements as "bid rigging," § 1-3.214 (circ. 1, second edition, 1964) of the Federal Procurement Regulations permits negotiation after advertising where it is determined that bid prices received are not reasonable. In the circumstances reported here, it does not appear that D&S's allegation falls within the significant issue exception.

As requested, the enclosure to your communication is herewith returned.

Sincerely yours,

MILTON SOCOLAR

Milton J. Socolar
General Counsel

Enclosure